

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>USAsia Telecom, LLC</b>	)	File No. SES-LIC-19991029-01895
	)	Call sign: E990452
For Authority to Operate a	)	
Transmit/Receive Earth Station	)	
in Kapolei, Hawaii via JCSAT-3	)	

**ORDER AND AUTHORIZATION**

**Adopted:** April 21, 2000

**Released:** April 24, 2000

**By the Chief, Satellite and Radiocommunication Division, International Bureau:**

**I. INTRODUCTION**

1. In this Order, we authorize USAsia Telecom, LLC to operate an earth station in Kapolei, Hawaii to communicate with a Japanese satellite, JCSAT-3, to provide digital data and internet protocol services between United States and the Asia-Pacific region. This action represents another step in implementing U.S. market-opening commitments to satellites licensed by other countries. Grant of this application should stimulate competition in the U.S. fixed- satellite services market by providing U.S. customers with increased alternatives in choosing communications providers and services. Increased competition may also lead to reduced prices for those services and further technological innovation.

**II. BACKGROUND**

2. In the *DISCO II Order*, the Commission established procedures and policies for authorizing U.S. earth station licensees to access non-U.S. satellites for international and domestic services in order to implement the market opening commitments made by the United States in the World Trade Organization ("WTO") Agreement on Basic Telecommunications Services ("WTO Basic Telecom Agreement").<sup>1</sup> The procedure requires a U.S. earth station operator seeking to communicate with a non-U.S. satellite to file an earth station application for an initial license or

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<sup>1</sup> *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, *Notice of Proposed Rulemaking*, 11 FCC Rcd 18178 (1996), *Report and Order*, 12 FCC Rcd 24094 (1997) ("*DISCO II*").

for a modification of its existing earth station license, listing the foreign satellite as a point of communication. The Commission will then conduct a public interest analysis set forth in *DISCO II* to determine whether the application satisfies the various criteria established for evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States.

3. Because the Commission does not issue duplicative U.S. licenses for space stations licensed by another administration,<sup>2</sup> a U.S. earth station application often represents the Commission's first opportunity to evaluate whether the foreign space station complies with the Commission's technical, legal, and financial qualification requirements. The first earth station applicant seeking to communicate with a particular foreign satellite must therefore include the same detailed information about the space station and its operations that the Commission requires from U.S. space station applicants.<sup>3</sup> Financial information is not required if the satellite has already been launched and technical information is not required if the satellite operator has already provided the requisite information during international coordination with the United States.<sup>4</sup>

4. USAsia Telecom seeks authority to operate an earth station that will provide a variety of fixed-satellite services in the conventional C-band<sup>5</sup> throughout the Pacific region using the JCSAT-3 satellite located at 232° W.L. (123° E.L.) JCSAT-3 is a satellite operated by Japan Satellite Systems, Inc. ("JSS"), which is licensed by the Japanese government. The application is unopposed.

### III. DISCUSSION

5. In the *DISCO II Order*, the Commission set forth the public interest analysis applicable in evaluating applications to use non-U.S. licensed space stations to provide satellite service in the United States. In conducting this analysis, we consider the effect on competition in the United States, spectrum availability, eligibility requirements and operating (*e.g.*, technical) requirements. In addition, we consider issues of national security, law enforcement, foreign policy and trade policy, when those issues are brought to our attention by the Executive Branch with regard to a particular application. After consideration of these issues, we find that the public interest would be served by a grant of USAsia Telecom's application.

6. **Competition Considerations.** In *DISCO II*, the Commission established a

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<sup>2</sup> *Id.* at 24174 (para.188).

<sup>3</sup> 47 C.F.R. § 25.137. This regulation requires foreign satellites to provide the information required from U.S. space stations under 47 C.F.R. § 25.114.

<sup>4</sup> 47 C.F.R. § 25.137.

<sup>5</sup> The C-band refers to the 3700-4200 MHz/5925-6425 MHz frequencies.

rebuttable presumption in favor of entry by non-U.S. licensed satellites licensed by WTO members to provide services covered by U.S. commitments under the WTO Basic Telecom Agreement. This means we will presume that WTO-member licensed satellites providing WTO-covered services satisfy the competition component of the public interest analysis. The Commission concluded that the market access commitments made under the WTO Basic Telecom Agreement will help ensure the presence and advancement of competition in the satellite services market and yield the benefits of a competitive marketplace to consumers in the United States and other countries.

7. USAsia Telecom seeks to access a satellite licensed by Japan, a WTO-member, to provide fixed-satellite service, a WTO-covered service, in the United States. No public comments were filed that presented any challenge to this presumption. Consequently, we presume that grant of USAsia Telecom's application will further competition in the United States.

8. **Spectrum Availability.** In *DISCO II*, the Commission determined that, given the scarcity of orbit and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a foreign satellite to serve the United States.<sup>6</sup> This is consistent with the Chairman's Note to the WTO Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry.

9. Licensing USAsia Telecom to access JCSAT-3 at the 232° W.L. orbit location will neither affect operations of any U.S.-licensed satellites nor contravene the Commission's spectrum/frequency management policies. Indeed, other earth stations have been licensed to access this same satellite prior to DISCO II and there have been no interference problems to date.<sup>7</sup>

10. **Eligibility Requirements.** The Commission's *DISCO II Order* requires that space station operators not licensed by the Commission meet the same legal, financial and technical qualifications required of U.S. licensed space station operators. Nothing in the record raises concerns about JSS's legal qualifications to provide satellite services in the United States. Further, we need not examine JSS's financial qualifications because JCSAT-3 is already in orbit.

11. We must, however, review JCSAT-3's technical qualifications. The Commission's satellite licensing policy is predicated upon two-degree spacing between geostationary satellites.<sup>8</sup> This policy permits the maximum use of the geostationary satellite

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<sup>6</sup> *DISCO II*, 12 FCC Rcd. at 24158 (para.149).

<sup>7</sup> *See Vision Accomplished, Inc.*, 11 FCC Rcd. 3716 (1995).

<sup>8</sup> For more information regarding the Commission's two-degree spacing policy, see *Licensing Space*

orbit.<sup>9</sup> Applicants must demonstrate that they comply with the Commission's technical requirements, designed to permit two-degree orbital spacing, before being authorized to provide service in the United States. The Commission may license satellites that are not two-degree compliant (or earth stations seeking to access such), but only when the applicants can demonstrate that their operations will not cause harmful interference to existing two-degree compliant satellite operations. Further, non-conforming operations are conditioned upon a licensee accommodating future satellite networks serving the United States that are two-degree compliant.<sup>10</sup>

12. Based on the technical information submitted by USAsia Telecom, we conclude that JCSAT-3 meets the Part 25 two-degree spacing requirements, with one exception. Part 25.210 (a) (1) requires C-band domestic satellites to use orthogonal linear polarization, with one of the planes defined by the equatorial plane.<sup>11</sup> On JCSAT-3, the polarization planes are rotated counterclockwise by 22° relative to the requirement of § 25.210 (a) (1).

13. The intent of the C-band polarization requirements is to minimize the interference potential when analog video transmissions meet the center-frequency constraints of § 25.211 (a) and neighboring satellites are orthogonally polarized for co-channel analog video transmissions.<sup>12</sup> In the situation where digital signals of uniform power spectral density (*i.e.*, without the spectral density peaks characteristic of analog transmissions) are being transmitted in both polarizations, the interference potential into a neighboring satellite's network is not dependent on the angle of the polarization planes relative to the equatorial plane.

14. Since USAsia Telecom has requested to use digital transmissions only in its license application, we place no additional conditions on USAsia Telecom's license, at this time, as a result of JCSAT-3's non-conforming polarization. In the future, should USAsia Telecom wish to transmit analog video signals, it must file an application for license modification. At that time, we will consider whether additional conditions on USAsia Telecom's operations are necessary.

15. Further, as with U.S. satellites, the Commission may in the future authorize services over U.S.-licensed or non-U.S.-licensed space stations that are two-degree compliant at orbital

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*Stations in the Domestic Fixed-Satellite Service*, 48 Fed. Reg. 40233 (Sept. 6, 1983).

<sup>9</sup> *Assignment of Orbital Location to Space Stations in the Domestic Fixed-Satellite*, 11 FCC Rcd 13788, 13790 (1996). Prior to the Commission's adoption of the two-degree spacing policy, satellites in the geostationary satellite orbit were usually spaced three or four degrees apart. By adopting rules that enabled satellite operators to place their space stations two degrees apart, the Commission was able to accommodate more geostationary satellites.

<sup>10</sup> *See e.g., Systematics General Corporation*, 2 FCC Rcd. 7550, 7551 (1987); *New Skies Satellites, N.V.*, 14 FCC Rcd 13003, 13038 (1999).

<sup>11</sup> Since *DISCO II* requires that non-U.S. space station meet the same technical requirements as U.S.-licensed satellites, the requirements of Part 25.210(a) also apply to the JCSAT-3 satellite.

<sup>12</sup> 47 C.F.R. § 25.211.

locations as close as two degrees from JCSAT-3. Should the Commission do so, JSS would be required to coordinate, in good faith, with the licensee of that satellite.

16. **Other Issues.** As described above, under *DISCO II*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis. Nothing in the record before us raises any such concerns.

#### IV. CONCLUSION

17. We find that USAsia Telecom's proposed communications with JCSAT-3 satisfies the Commission's *DISCO II* policies regarding U.S. access to space stations licensed by foreign administrations. Thus, a grant of the application will serve the public interest.

#### V. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED that USAsia Telecom's application, File No. SAT-LIC-19991029-01895, IS GRANTED and USAsia Telecom is authorized to operate its 9.3 meter earth station at Kapolei, Hawaii (E990452) to communicate with the JSAT-3 satellite for the provision of digital data and internet protocol services between the United States and the Asia-Pacific region.

19. IT IS FURTHER ORDERED that USAsia Telecom is authorized to provide service using the 3700-4200 MHz/5925-6425 MHz frequencies.

20. IT IS FURTHER ORDERED that this authorization does not authorize USAsia Telecom to provide any Direct-to-Home ("DTH"), Direct Broadcast Satellite ("DBS") service or Digital Audio Radio Service ("DARS") to, from, or within the United States.

21. IT IS FURTHER ORDERED that this Order is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261. This Order shall be effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106 and 1.115, may be filed within 30 days of public notice of the release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz  
Chief,  
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